

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2000-7833] — /

**Draft Programmatic Environmental
Impact Statement for Vessel and
Facility Response Plans for Oil; On-
Water Mechanical Recovery Capacity
Increase for 2003 and Alternative
Removal Technologies**

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent with request for comments.

SUMMARY: The Coast Guard announces its intent to prepare and circulate a draft Programmatic Environmental Impact Statement (PEIS) for the development of appropriate regulations to increase the oil removal capacity (Caps) requirements for tank vessels and marine transportation-related (MTR) facilities and thus, increase the available spill removal capability for oil discharges. The Coast Guard also seeks public and agency input on the development (scope) of the PEIS. Specifically, the Coast Guard requests input on any environmental concerns that the public may have related to the alternatives for increasing spill removal capability for an oil discharge, suggested analyses or methodologies for inclusion in the PEIS, and possible sources of relevant data or information.

DATES: Comments and related material must reach the Docket Management Facility on or before November 30, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2000-7833), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, D.C. 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed regulatory action, contact Mr. Brad McKittrick, Office of Standards Evaluations and Analysis, U.S. Coast Guard, 202-267-0995 or via email bmckittrick@comdt.uscg.mil. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name and address, and identify the docket number (USCG-2000-7833). You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by

only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard invites comments and suggestions on the proposed scope of the Programmatic Environmental Impact Statement (PEIS). The scoping process will help the Coast Guard ensure that a full range of appropriate issues related to this proposal and all reasonable alternatives are addressed.

The Coast Guard will consider all comments received during the comment period.

Background and Purpose

Under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380), and Executive Order 12777, the Coast Guard is authorized to issue regulations requiring the owners and operators of tank vessels and marine transportation-related (MTR) facilities to prepare and submit response plans. In 1996, the Coast Guard published final tank vessel response plan regulations (33 CFR part 155) and final MTR facilities response plan regulations (33 CFR part 154). These regulations contain requirements for on-water oil removal capacity that planholders transporting or transferring petroleum oil are required to meet in planning for an oil discharge.

These regulations also state that the Coast Guard will periodically review the existing oil removal capacity (Caps) requirements, to determine if increases in mechanical recovery systems, and additional requirements for new response technologies, are practicable. In 1999, the Coast Guard completed an in-depth response equipment review, and subsequently increased existing mechanical on-water recovery requirements by 25% effective as of April 5, 2000 (65 FR 710). Based on that review, the Coast Guard also initiated an evaluation for the potential for additional increases in mechanical on-water recovery and new requirements for other response technologies, which would, if practicable, become effective in 2003.

Preliminary scoping indicates that there may be both beneficial and potentially adverse effects to the environment. The Coast Guard believes the effects on the environment, as a whole, will be significantly beneficial. However, since significant beneficial environmental effects are probable in conjunction with potential adverse effects, the Coast Guard has decided to prepare a PEIS. The implementing

regulations of the Council on Environmental Quality's National Environmental Policy Act (NEPA) state that a significant environmental impact may exist even if an agency believes that the net balance of environmental effects are beneficial.

The PEIS for developing this regulation will be programmatic in nature and will examine the possible impacts to the environment on a national level. The PEIS will be limited in scope to the discussion of the general impacts resulting from implementing the action. The PEIS will also be prepared in accordance with NEPA, the Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of NEPA," and the Coast Guard's NEPA procedures and policies—as specified in, "National Environmental Policy Act: Implementing Procedures and Policy for Considering Environmental Impacts," COMDTINST M16475.1C.

Proposed Action

The proposed action is the development of appropriate regulations to increase the oil removal capacity (Caps) requirements for tank vessels and MTR facilities and thus, increase the available removal capability for oil discharges.

Need for Action

As mandated by OPA 90, and other statutes, one of the primary missions of the Coast Guard is protection of the marine environment, including implementing a variety of oil pollution prevention, preparedness and response strategies. In carrying out this responsibility, the Coast Guard promulgated regulations (33 CFR part 154) and (33 CFR part 155) in 1996, requiring the industry to have certain oil spill response equipment available by contract or other means. Based on a recently completed review of those regulations, and adoption of regional and local area pre-authorization agreements for dispersant and *in situ* burning use in accordance with the National Contingency Plan (NCP) (40 CFR part 300), the Coast Guard needs to examine the practicability of a regulatory change which could do any one of, or a combination of, the following:

- Change the amount of mechanical recovery equipment available for response.
- Impose a requirement for stockpiling of dispersant equipment.
- Impose a requirement for the stockpiling of *in situ* burning equipment.

The need for this action is outlined below.

1. *Oil Pollution Act of 1990 (OPA 90)*. This public law was enacted in response to the EXXON VALDEZ oil spill in Alaska and other oil spills. One of the important goals of OPA 90 was to increase the overall spill response capability in the United States. The Coast Guard was one of several agencies tasked with implementing OPA 90. OPA 90 requires—

- The Coast Guard to monitor and oversee the oil transportation industry's capability to respond to oil pollution incidents from vessels and facilities engaged in transport of oil by water. To implement OPA 90, the Coast Guard promulgated regulations to require vessels and marine transportation-related facilities to develop plans describing how they will respond to an oil pollution incident, including a worst case oil discharge (refer to 2 and 3 of the *Need for Action* section); and
- Changes in the National Response System (described in 40 CFR part 300), including the establishment of Area Committees. Area Committees in cooperation with existing Regional Response Teams (RRT) were tasked with determining potential oil spill risks and with devising strategies to mitigate oil spills in the most environmentally protective manner practicable (refer to 4 and 5 of the *Need for Action* section).

2. *Regulatory Requirements*. In response to the OPA 90 mandate, the Coast Guard published tank vessel response plan regulations (33 CFR part 155) and MTR facilities response plans (33 CFR part 154). These regulations were published as Interim Final Rules on February 5, 1993 (58 FR 7376 and 58 FR 7330 respectively), and as Final Rules on January 12, 1996 (61 FR 1052), for vessel regulations and on February 29, 1996 (61 FR 7890), for MTR facility regulations. The goal of these regulations was to ensure prompt response to and clean up of oil discharged anywhere within United States waters.

The regulations required vessel and facility planholders to have available, by contract or other approved means, mechanical recovery equipment suitable for removing spilled oil from the environment. In establishing mechanical recovery equipment standards, the Coast Guard recognized that there were technological, and availability limits on mechanical recovery equipment. Therefore, the regulations established Caps on the amount of mechanical recovery resources that vessel and facility planholders were required to ensure available.

Capability to employ other potentially environmentally protective response technologies (i.e., dispersants, and *in situ* burning) were not imposed by the regulations due to the lack of available equipment to deploy these options. However, the regulations did allow certain planholders to apply for a reduction in the amount of mechanical recovery equipment if the planholders could establish a dispersant capability based on certain conditions. These conditions were proven to be too restrictive, and no planholder applied for the "dispersant mechanical recovery offset."

The regulations recognized that changes in technology, equipment availability and general acceptance of certain other response technologies might occur over time. Therefore, the regulations required the Coast Guard to initiate a review of these original Caps (Response Plan Equipment Caps Review) to determine whether the mechanical recovery Caps should be increased and whether other response technologies in addition to mechanical recovery were practicable (refer to 3 of the *Need for Action* section).

3. *Response Plan Equipment Caps Review*. In conducting the Response Plan Equipment Caps Review (Caps Review), the Coast Guard evaluated improvements in technology, availability, and general acceptance of mechanical recovery equipment and other response technologies since the original tank vessel and MTR facility response plan regulations were promulgated (refer to 4 and 5 of the *Need for Action* section). The review concluded that there have been sufficient improvements in these areas to initiate a new regulatory project. The new regulatory project would be aimed at increasing oil removal capacity even further and thus, ensure that planholders have even better capabilities available to respond to oil discharges in the future. As outlined in the *Alternatives* section of this notice, the Coast Guard is examining the possibility of creating a new regulation which could do any one of, or a combination of, the following:

- Change the amount of mechanical recovery equipment available for response.
- Impose a requirement for stockpiling dispersant equipment.
- Impose a requirement for stockpiling *in situ* burning equipment.

4. *National Contingency Plan (NCP)*. The NCP (40 CFR part 300) was modified in accordance with OPA 90 mandates to encourage more active government planning at the local and regional levels, and focused on

developing and implementing environmentally appropriate oil spill response strategies. Specifically, the NCP directs RRTs and Area Committees to consider, as part of their planning activities, the desirability of using other response technologies in addition to mechanical recovery in mitigating the environmental impacts of an oil spill. The NCP also directs that the response technologies to be employed on any spill are those that best minimize the overall impact to the environment.

5. *Pre-authorization Plans*. In carrying out the NCP mandates, RRTs and Area Committees around the country have engaged in intensive examination of the environmental tradeoffs involved in responding to oil spills using mechanical recovery, dispersants and *in situ* burning. Based on these local and regional environmental evaluations, almost every RRT and coastal Area Committee has now adopted a pre-authorization or expedited approval agreement to allow the use of dispersants and *in situ* burning in response to oil spills. All of these agreements are limited in geographic extent and conditions for use. All were developed and approved through an agreement of appropriate federal and state natural resource trustees. The general acceptance of these response options imposes on the Coast Guard the responsibility to ensure their availability in the event of a spill incident where use may provide environmental benefit.

Purpose of Proposed Action

The purpose of the proposed action is to increase the oil removal capability (Caps) requirements for tank vessels and MTR facilities and thus, increase the available spill removal capability for oil discharges.

Alternatives

Reasonable alternatives that meet the established purpose and need will be evaluated and considered in detail. Currently, the Coast Guard is proposing that the PEIS examine the following alternatives:

(1) *No Action*. This alternative would not implement any new response plan regulations. This alternative would maintain the current level of mechanical recovery equipment and credit for maintaining dispersant capability (33 CFR parts 154 and 155) for responding to an oil discharge. Although this alternative will not meet the purpose and need, it will be examined in the PEIS to provide a baseline by which decision makers and the public can compare the magnitude of

environmental effects of the action alternatives.

(2) *On-water Mechanical Recovery*. Under this alternative, the Coast Guard would implement a regulation that would change the amount of mechanical recovery equipment planholders are required to have available to respond to an oil discharge. No other changes to existing regulations would be required. On-water mechanical recovery equipment is used to block the spread of oil, concentrate the oil into one area, and physically remove it from the water surface by the use of floating containment booms and skimmers.

(3) *On-water Dispersants Use*. Under this alternative the Coast Guard would implement a regulation that would require planholders to have dispersant capabilities to respond to an oil discharge. The dispersant credit in the current regulations would be eliminated. No other changes to existing regulations would be required. Dispersants, which are applied by either aircraft or vessel, act to break the oil into small droplets. These small droplets are then dispersed into the water column to be naturally degraded.

(4) *On-water In situ Burning*. Under this alternative the Coast Guard would implement a regulation that would require planholders to have *in situ* burning capabilities to respond to an oil discharge. No other changes to existing regulations would be required. In this alternative, oil would be removed off the water surface by use of floating containment booms and igniting the contained oil.

(5) *Combinations of Alternatives 2, 3, and 4*. Under this alternative, the Coast Guard would implement a regulation requiring planholders to change oil removal capabilities based on any combination of alternatives 2, 3, and 4.

None of the alternatives being considered under the proposed action would require the actual use of a particular technology, nor do they dictate the methods or circumstances with which any oil spill removal technology would be used for any specific oil spill incident. The actual use of such response technologies will continue to be at the discretion of the Federal On-scene Coordinator in accordance with the controlling guidance contained within the Regional Contingency Plans and Area Contingency Plans. However, the proposed action, depending on which alternative is chosen for implementation, may change localized infrastructure for mechanical recovery equipment, dispersant use and *in situ* burning resources. If either alternatives 3, 4 or 5, are implemented, it is

anticipated that, in areas where dispersant use and *in situ* burning have been evaluated and determined to be potentially beneficial (e.g., where interagency pre-authorization agreements have been adopted), there would be increased opportunities to use dispersants and *in situ* burning at incidents where those options were previously not employed solely due to the lack of ready availability.

Under all the alternatives, planholders would be required to have oil spill aerial tracking capabilities available by contract or other approved means. This requirement would provide planholders the ability to maintain visual observation of spill response operations and allow for efficient deployment of mechanical recovery resources, as well as dispersant application systems and *in situ* burning equipment.

Scope

Certain environmental issues have been tentatively identified for analysis in the PEIS. These issues are presented to facilitate public comment during the scoping process of the PEIS. It is neither intended to be all-inclusive nor a predetermined set of potential impacts. Additions to or deletions of issues may occur as a result of the scoping process. These environmental issues include the following:

(1) Endangered or threatened species: Potential impacts to endangered or threatened marine life and birds from each of the alternatives.

(2) Essential fish habitat: Potential effects to waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity from each of the alternatives.

(3) Other Biological Habitats: Potential impacts to wetlands, estuaries, shorelines and benthos from each of the alternatives.

(4) Coastal and Marine Birds: Potential impacts to coastal marine and birds from each of the alternatives.

(5) Aquatic Resources: Potential effects to marine mammals, sea turtles, open ocean fisheries, nearshore fisheries, phytoplankton, zooplankton, aquatic vegetation, and benthic organisms from each of the alternatives.

(6) Atmospheric Resources: Potential air quality impacts resulting from emissions from each of the alternatives.

(7) Water quality: Potential impact to water quality resulting from each of the alternatives.

(8) Archeological/Historic Resources: Potential impact to archeological/historic resources resulting from each of the alternatives.

(9) Socio-economics: Potential impact to recreational activities, tourism, recreational fishing, and subsistence activities due to each of the alternatives.

(10) Public Health and Safety: Potential impacts to public health and safety associated with each of the alternatives.

Public scoping meetings may be scheduled if comments indicate that a meeting would yield useful information.

Once the draft PEIS is published, the Coast Guard will hold a public meeting during the comment period. A notice of that meeting will be published in the **Federal Register**. All appropriate written and oral comments provided at the public meeting, will be considered in the preparation of the Final PEIS, and will become part of the public record (*i.e.*, names, addresses, letters of comments, comments provided during the public meeting).

Dated: August 28, 2000.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

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